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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1295 (XLIV).

[27 January 1997]

1. As part of its activity during its previous session, the Commission on Human Rights helped to promote a process which has resulted in an accord between the Government of Colombia and the United Nations High Commissioner for Human Rights to help promote efforts by the Government to improve the human rights situation and to report to this Commission, through the High Commissioner, on the effectiveness of those efforts.

2. At the time of last year's session Colombia was already one of the most violent nations in the world. However, the stakes facing the Commission and Colombia's people are much higher now. The human rights situation has deteriorated significantly, and those institutions responsible for protecting and promoting respect for human rights are either in a process of decomposition or are under direct attack by sectors of the Government. If these attacks succeed, Colombia will have effectively relinquished its status as a State ruled by laws intended to limit arbitrary and autocratic exercise of authority.

3. While the human rights problem in Colombia has many aspects, there are certain unmistakable institutional crises whose proper resolution is vital. The Lawyers Committee believes that attention to these matters must be at the top of the agenda of the High Commissioner's field office. How the Government proceeds on these issues bears directly on the sincerity of its numerous professed commitments to human rights, and will be of paramount importance to the Commission as it continues to determine its own actions in respect of Colombia. The response of the field office in this regard should also be carefully reviewed by this Commission as it evaluates the utility of the office in promoting and protecting human rights.

4. Among the problems in Colombia of particular urgency are the following.

Paramilitary structures and their relationship to the armed forces

5. According to numerous sources in Colombia, the phenomenon of paramilitary violence can be largely explained as the result of a deliberate strategy by the armed forces. Paramilitaries occupy strategic areas, clear them of supposed dissidents, suspected sympathizers of the opposition or the armed guerilla groups through violence and intimidation, and operate virtually unmolested, and at times in concert with the armed forces.

6. In addition to their military significance, paramilitaries have provided an element of deniability, often exploited by several Colombian governments, regarding official responsibility for violent acts against civilians. Figures compiled by Colombian human rights organizations for the period October 1995-September 1996 indicate that paramilitaries are responsible for more than 60 per cent of those homicides, disappearances and extrajudicial executions for which the responsible party can be identified. Although there remain many cases in which the perpetrators have not or cannot be identified with confidence, a pattern emerges by which the declining percentage of crimes attributed to the armed forces themselves coincides with the rise in those linked to the paramilitaries.

7. Paramilitary violence has had the intended effect of driving large numbers of civilians off their land and joining the swelling ranks of Colombia's displaced. For example, paramilitaries are believed responsible for the displacement of between 170 and 260 peasant families from Bellacruz (Cesar department) last February. Various Colombian press accounts attribute from 8 to 23 murders and 5 disappearances in Bellacruz to the paramilitaries. As this Commission is well aware, displacement inevitably leads to sequelae of human rights and humanitarian concerns for the affected populations; whose security and well-being are among the other unmet responsibilities of the Colombian State.

8. Paramilitary violence is open and notorious, depriving Colombian officials of the excuse that the responsible groups cannot be confronted.

The failure of civilian control over the military

9. At the last session of this Commission, the Lawyers Committee and others reported on the failure of the Government of Colombia to address the problem of institutionalized impunity which has resulted from the military's insistent

and over broad application of military jurisdiction to alleged human rights abuses. Despite the much publicized commission established by the Government to propose modifications to the military justice code, military jurisdiction has been expanded, not limited. In the face of verifiable facts, the Government refuses to acknowledge this and has inexcusably sought to convey the opposite impression. In a November 1996 letter responding to a resolution by the European Parliament, the Colombian Ministry of External Relations cited this initiative as a means of strengthening military justice against impunity.

10. In fact, proposed constitutional changes pending before the Colombian Senate seek to accomplish exactly the opposite by obliterating the legal basis for civilian review of military human rights abuses. These changes would strip the Office of the Prosecutor General of its authority to conduct criminal investigations, and the Office of the Ombudsman for Human Rights of its power to conduct civil administrative proceedings - often the only redress available after the military has absolved its own personnel of criminal charges relating to human rights abuses. Civilian courts would also lose their authority to hear petitions for tutela alleging human rights abuses by military personnel; these too would go before military courts. During time of war or "interior commotion", tutela would be suspended.

Increased military power over civilians

11. The military authorities already exercise significant de facto arrest powers in conflict zones. Asserting that they are entitled to treat all suspected subversives as "permanently en flagrante delicto" they claim, contrary to law, that they can make arrests without judicial authorization. This has led to great abuse, particularly in cases before the "faceless" regional jurisdiction. The response of the Colombian authorities bears serious scrutiny. A proposed constitutional amendment would remove the requirement of an arrest warrant whenever, in peacetime, the Government has serious cause to fear disturbances of public order. Instead, the Government itself would order the round-up of those persons regarding whom there are "grave indications that they act against the peace", and detain them for seven days before bringing them before a judge. Another constitutional proposal by the Samper Government would empower the military to perform police functions in civilian criminal cases.

12. The Government has already taken the step of creating, pursuant to emergency decree, numerous "public order zones". In such zones the military assumes the authority over all civilian forces. Human rights groups report that the practice continues even after the expiration of the decree that created the zones.

Distortions of legal process

13. The "faceless" regional court system continues to be characterized by inefficiency and disorganization, which have exacerbated the case backlogs that the system was supposed to resolve. Combined with public order zones, the regional courts have allowed the military to infiltrate the investigative process, from searches and seizures to arrests and interrogations, despite the absence of legitimate legal authority to do so. The substantive ambiguity of the crimes within its jurisdiction have resulted in the prosecution of civic

leaders, social activists and opposition politicians for terrorism related offences, which carry enhanced criminal sentences and are tried via abusive procedures.

Constitutional balance of power

14. In contravention of its numerous promises to work to promote human rights, the Government is attempting to rewrite Colombia's Constitution in order to undermine the separation of powers and checks and balances that are intended to avoid autocratic action. Specifically, the proposed reforms would expand executive discretion to declare and maintain states of emergency, and, as noted above, allocate police powers to the military. The Government seeks to limit the ability of the legislative to oversee states of emergency; and to drastically reduce judicial review of the executive's decision to invoke such states and to legislate under them.

15. In the light of the foregoing, the Lawyers Committee for Human Rights urges the Commission on Human Rights to seek from the High Commissioner for Human Rights a plan of action identifying the areas of priority attention as it assists and reviews Colombian efforts in respect of human rights. These priority areas could include:

(i) Proposed constitutional changes regarding executive and military authority;

(ii) Efforts to dismantle paramilitary groups and halt their illegal activities, in particular the violence and intimidation that has led to internal displacement;

(iii) Key criminal investigations such as those concerning alleged mass disappearances, presumed murder and paramilitary activity by Gen. Farouk Yanine Diaz and Col. Hernando Navas Ruvio; jurisdiction over both cases was denied the Office of the Prosecutor General and handed to the military courts in November 1996;

(iv) The unwillingness of Colombian insurgent groups to acknowledge the applicability of common article 3 of the 1949 Geneva Conventions to the current conflict, and their failure to state publicly that they will be bound by its norms;

(v) Efforts by the Office of the Prosecutor General to limit the use of "faceless" prosecutors, in accordance with that Office's resolution 973 committing it to do so.